

§ 20.12

the reason(s) why it is outside the jurisdiction of these regulations.

§ 20.12 Mediation.

(a) DOC will refer to a mediation service designated by the Secretary all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly within an exception; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or to make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to DOC. DOC will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator is required to protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained, in the course of the mediation process without prior approval of the head or the mediation service.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with DOC. Mediation ends if:

(1) 60 days elapse from the time DOC receives the complaint; *or*

(2) Prior to the end of that 60-day period, an agreement is reached; *or*

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(f) The mediator shall return unresolved complaints to DOC.

§ 20.13 Investigation.

(a) Informal investigation:

(1) DOC will investigate complaints that are unresolved after mediation or

are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, DOC will use informal factfinding methods, including joint or separate discussions with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOC may seek the assistance of any involved State program agency.

(3) DOC will put any agreement in writing and have it signed by the parties and an authorized official at DOC.

(4) The settlement shall not affect the operation of any other enforcement effort of DOC, including compliance reviews and investigation or other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) Formal investigation: If DOC cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, DOC will attempt to obtain voluntary compliance. If DOC cannot obtain voluntary compliance, it will begin enforcement as described in §8a.15.

§ 20.14 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; *or*

(b) Cooperates in any mediation, investigation, hearing, or other part of DOC's investigation, conciliation, and enforcement process.

§ 20.15 Compliance procedure.

(a) DOC may enforce the Act and these regulations by:

(1) Terminating the Federal financial assistance to the recipient under the program or activity found to have violated the Act or these regulations. The

determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. If a case is settled during mediation, or prior to hearing, Federal financial assistance to the program will not be terminated.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOC will limit any termination under this section to the particular recipient and particular program or activity or part of such program and activity DOC finds in violation of these regulations. DOC will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from DOC.

(c) DOC will take no action under paragraph (a) until:

(1) The head of the organization providing the financial assistance has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a).

(d) DOC also may defer granting new Federal financial assistance to a recipient when a hearing under § 20.16 is initiated.

(1) New Federal financial assistance from DOC includes all assistance for which DOC requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from DOC does not include in-

creases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 20.16.

(2) DOC will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 20.16. DOC will not continue a deferral for more than 60 days unless a hearing has begun within that time, or the time for beginning the hearing has been extended by mutual consent of the recipient and the head of the organization providing Federal financial assistance. DOC will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) DOC will limit any deferral to the particular recipient and particular program or activity or part of such program or activity DOC finds in violation of these regulations. DOC will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not, and would not in connection with the new funds, receive Federal financial assistance from DOC.

§ 20.16 Hearings, decisions, post-termination proceedings.

Certain DOC procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to DOC enforcement of these regulations. They are found in 15 CFR Part 8, § 8.12 and § 8.13.

§ 20.17 Remedial action by recipients.

(a) Where DOC finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOC may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOC may require both recipients to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.